

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THOMAS G. VAIL,

Plaintiff,

v.

CORTEZ-MASTO, et al.,

Defendants.

Case No. 2:12-cv-01148-MMD-CWH

ORDER

(Supplemental Briefing regarding Motion to
Dismiss – dkt. no. 5)

In their Motion to Dismiss, Defendants argue that Plaintiff's claims are barred under the "favorable termination" doctrine articulated in *Heck v. Humphrey*, 512 U.S. 477 (1994). The doctrine holds that if a prisoner seeks to challenge the validity of a conviction or sentence, the prisoner must first demonstrate that the conviction or sentence has been successfully overturned. See *Heck v. Humphrey*, 512 U.S. 477, 483-87 (1994). In his Opposition, Plaintiff does not respond to Defendants' argument on this point.

The Court requests supplemental briefing on this issue. Specifically, the Court requests that the parties provide a briefing of no more than five (5) pages responding to the following:

- (1) What is Plaintiff Vail's current inmate status?
- (2) Did Plaintiff challenge his conviction under the applicable habeas corpus statute, 28 U.S.C. § 2254? If so, what is the current status of the habeas proceeding?

1 (3) Is Plaintiff *Heck*-barred from bringing his claims against the government
2 officials in this case? In addressing this point, the parties must address:


3 a. Is *Heck* applicable to this case? Would the claims raised here
4 necessarily imply the invalidity of Plaintiff's prior convictions or
5 sentences which form the basis for Plaintiff's allegations in this
6 case?

7 b. How, if at all, Plaintiff's inmate status and the status of any habeas
8 proceedings he has initiated relates to the Court's *Heck* analysis.

9 c. Related to point (b), whether the principles articulated in Justice
10 Souter's *Spencer v. Kemna*, 523 U.S. 1, 18 (1998) concurrence and
11 its 9th Circuit progeny provide Plaintiff with a basis to bring this
12 lawsuit.

13 Defendants must file their supplemental brief by Monday, February 4, 2013.
14 Plaintiff must respond by Friday, February 8, 2013. The briefs must conform to the
15 formatting requirements of LR 10-1.

16 DATED THIS 25th day of January 2013.
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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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